



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

May 8, 2023

Re: FOIA Request NLRB-2023-000630

Dear Tony Molino (University of Rochester):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on January 18, 2023, in which you seek “all information given in comments made by federal legislators (members of the United States House of Representatives or the United States Senate) on proposed rules issued by your agency . . . between 2003-2022.” Specifically, you seek the following from each comment: 1. the text; 2. the date of when each comment was received; 3. the document number, docket number and RIN of all proposed rules for each comment; 4. title information of the comment; 5. author(s) of the comment; and 6. any other metadata available on the comment. You did not assume financial responsibility for the processing of your request, but you requested a waiver of fees.

We acknowledged your request on January 18, 2023.

Your request is granted, as explained below.

Search inquiries were directed to various offices within the Agency– the Office of the Executive Secretary, Records Management, and the Contempt, Compliance, and Special Litigation Branch, and assistance sought from the Office of the Chief Information Officer, to try and locate responsive records arising out of the Agency’s past proposed rulemaking actions and/or procedural rule proceedings.

A breakdown of our search results identifying the responsive rulemakings and then specifically any responsive comments made by Senate and/or House representatives to the proposed rules is being provided below to demonstrate the chronology and extent of the Agency’s rulemaking activity and/or if any comments received between 2003-2022. In this time frame, there were a total of 15 proposed rulemakings. Please note however, that some of the proposed rulemakings may appear more than once due to its procedural history, which may include litigation.

These searches located and retrieved 40 pages of responsive, releasable records (from #s 4 and 7 listed below), which are attached. Please note that responsive comment records that are already publicly available on www.regulation.gov are not being provided, as most of the more recent rulemakings directed commenters to provide submissions through regulations.gov. We are providing the link to the comments of the proposed rulemaking, if available. A summary of our search findings in the responsive time frame is as follows:

1. Proposed Rules Governing Consent-Election Agreements
 - a. Published 7/27/04
 - b. Cite: 69 FR 44612
 - c. Written comments due 8/26/04
 - d. The only comment received was from the AFL-CIO and it is therefore non-responsive.
2. Privacy Act of 1974; Implementation
 - a. Published 12/13/06
 - b. Cite: 71 FR 74881
 - c. Written comments due 1/22/07
 - d. Per the Final Rule, no comments were received.
3. Joint Petitions for Certification of Consenting to an Election
 - a. Published 2/26/08
 - b. Cite: 73 FR 10199
 - c. Written comments due 3/27/08
 - d. It does not appear that the Agency published a final rule, and, in any event, the Executive Secretary's office has confirmed that no responsive comments were received.
4. Proposed Rules Governing Notification of Employee Rights under the NLRA
 - a. Published 12/22/10
 - b. Cite: 75 FR 80410
 - c. Comments due 2/22/11 via mail/hand delivery or regulations.gov
 - d. One responsive comment was located, dated February 22, 2011, from Chairman Tom Harkin and Ranking Member George Miller, which is attached.
5. Representation Case – Procedures
 - a. Published 6/22/11
 - b. Cite: 76 FR 36811
 - c. Comments due 8/22/11
 - d. Any responsive comments received would be available here: <https://www.regulations.gov/docket/NLRB-2011-0002>.

6. Representation Case – Procedures (NOTE: This was a continuation of 76 FR 36811)
 - a. Published 2/6/14
 - b. Cite: 79 FR 7317
 - c. Comments due 4/7/14 via mail/hand delivery or regulations.gov
 - d. Any responsive comments received would be available here:
<https://www.regulations.gov/document/NLRB-2011-0002-65959/comment>.
7. 2017 Representation-Case Procedures
 - a. Published 12/14/17
 - b. Cite: 82 FR 58783 (RIN: 3142-AA12)
 - c. Responses due 4/18/2018
 - d. Our search located five letters from Members of Congress submitted to the Agency either prior to or during the comment period, which are being provided.
8. 2019 Representation-Case Procedures
 - a. Published 12/18/2019
 - b. Cite: 84 FR 69524 (RIN: 3142-AA12)
 - c. No comments were received, because this was published only as a final rule.
9. 2020 Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships
 - a. Published 4/1/2020
 - b. Cite: 85 FR 18366 (RIN: 3142-AA16)
 - c. Comments Due: 12/11/2019
 - d. Any responsive comments received would be available here:
<https://www.regulations.gov/document/NLRB-2019-0001-0001/comment>.
10. Joint employer Status Under the National Labor Relations Act
 - a. Published 2/26/2020
 - b. Cite: 85 FR 11184 (RIN: 3142-AA13)
 - c. Comments Due: 1/28/2019
 - d. Any responsive comments received would be available here:
<https://www.regulations.gov/document/NLRB-2018-0001-0001/comment>..
11. Jurisdiction-Nonemployee Status of University and College Students Working in Connection With Their Studies
 - a. Published 3/15/2021
 - b. Cite: 86 FR 14297 (RIN: 3142-AA15)

- c. Comments Due: 1/29/2020 (But NPRM was withdrawn 3/15/2021)
- d. Any responsive comments received would be available here:
https://www.regulations.gov/docket/NLRB_FRDOC_0001/comments.

12. Use of Videoconference Technology To Conduct Unfair Labor Practice and Representation Case Proceedings

- a. Published 11/05/2021
- b. Cite: 86 FR 61090 (RIN: 3142-AA20)
- c. Comments Due: 1/4/2022
- d. There are no comments noted on regulations.gov but the Executive Secretary confirmed that no comments were submitted by any Members of Congress.

13. Representation-Case Procedures: Voter List Contact Information; Absentee Ballots for Employees on Military Leave

- a. Published 7/29/2020
- b. Cite: 85 FR 45553 (RIN: 3142-AA17)
- c. Comments Due: 9/28/2020
- d. Any responsive comments received would be available here:
<https://www.regulations.gov/comment/NLRB-2020-0004-0244>

14. Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships

- a. Published 11/4/2022
- b. Cite: 87 FR 66890 (RIN: 3142-AA22)
- c. Comments Due: 2/2/2023
- d. Any responsive comments received would be available here:
<https://www.regulations.gov/docket/NLRB-2022-0002/comments>

15. Standard for Determining Joint-Employer Status

- a. Published 9/7/2022
- b. Cite: 87 FR 54641 (RIN: 3142-AA21)
- c. Comments Due: 12/7/2022
- d. Any responsive comments received would be available here:
<https://www.regulations.gov/docket/NLRB-2022-0001/comments>

In sum, the only responsive comments provided here were submitted in response to the “Proposed Rules Governing Notification of Employee Rights under the NLRA,” 75 Fed. Reg. 80410 (Dec. 12, 2010) (#4, above) and the request for information regarding “Representation-Case Procedures,” 82 Fed. Reg. 58783 (Dec. 14, 2017)(#7, above). Any other potential submissions by Members of Congress that you are interested in can be searched through the regulations.gov links provided above.

For the purpose of assessing fees, we have placed you in Category B, as an educational institution that operates a program or programs of scholarly research, NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vi). There is no charge assessed for emailed records. Given your placement in the educational institution category, your request for a fee waiver is moot.

You may contact Joseph Mullaney, the Attorney-Advisor who processed your request, at (202) 273-3863 or by email at Joseph.Mullaney@nrlb.gov, as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency's FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor

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Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (40 pages)